Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	WC Docket No. 07-245
Implementation of Section 224 of	)	
the Act;	)	RM - 11293
Amendment of the Commission's	)	
Rules and Policies Governing Pole	)	RM-11303
Attachments	)	

COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY

John P. Sullivan, Manager,
Utility Asset Management
Portland General Electric
121 SW Salmon Street
Portland, OR 97204
(503) 672-5569

March 7, 2008

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of Implementation of Section 224 of the Act; Amendment of the Commission's Rules and Policies Governing Pole Attachments	)))))))	WC Docket No. 07-245 RM - 11293 RM-11303

COMMENTS OF PORTLAND GENERAL ELECTRIC COMPANY

Pursuant to Federal Communications Commission ("FCC" or "Commission") rules, Portland General Electric Company (PGE) hereby submits these Comments to address the questions and issues raised in the Commission's October 31, 2007 Notice of Proposed Rulemaking ("NPRM") regarding the amendment of the Commission's rules and policies governing pole attachments.

PGE is an investor owned utility located in Portland, Oregon with approximately 775,500 retail accounts, a service territory population of 1.6 million (43% of state's population) and 4,105 square miles. PGE serves 52 cities, among the largest are Portland and

Salem. PGE has 44,884 miles of transmission and distribution lines and owns about 235,000 owned poles.

With regard to pole attachments, PGE manages 220,000 attachments by others on 180,000 PGE poles and PGE attaches to 45,000 poles owned by other pole owners. Since 1979, Oregon has been a reverse preemption state, and the Oregon Public Utility Commission (OPUC) regulates pole attachments. The PGE business unit charged with managing pole attachments, Utility Asset Management (UAM), has as its mission to protect the PGE infrastructure, provide nondiscriminatory access to PGE facilities, recover costs, and manage PGE attachments on poles owned by others. The third party entities that use PGE poles include 50 cable-telecom companies, six ILECs, five power companies, and four wireless companies. PGE also permits attachments by 22 local governments. In 2007, PGE received over 4,700 new attachment permit applications.

PGE submits these comments to inform the FCC of its pole management history and practices in a certified state, as well as the impact of Oregon rules on pole attachments. PGE supports the comments submitted by Edison Electric Institute and Utilities Telecom Council.

History

UAM was organized in 1994 to manage pole attachments, process a backlog of permit applications and make ready requests. In 1995, PGE began to audit its poles, which led to the discovery of unauthorized and noncompliant attachments. Unauthorized attachments are those without permits and noncompliant attachments are those that do not comply with the National Electric Safety Code. Oregon law allowed pole owners to recover the incurred cost of finding unauthorized attachments and noncompliant attachments. Costs associated with the audits were recovered from the responsible licensees. In addition, OPUC policy presumed that any unauthorized attachment had been in existence for a default period of five years and that a pole owner could recover a five year back rent from the licensee. Many contracts also allowed a $60.00 bootleg attachment discovery charge to be levied against a licensee when a pole owner discovered a bootleg attachment. Applying all the tools available, PGE was able to recover costs, levy the $60.00 bootleg charge and the five years back rent.

In 1999, the cable industry appealed to the Oregon legislature in an effort to modify regulations governing pole attachments. Through an industry task force working with the OPUC, a comprehensive group of administrative rules was promulgated in 2001. This included the first sanction rules, which were designed to incent compliance from attachers. Oregon pole owners' experience with unauthorized attachments suggested to the legislature that tools were needed to better incent compliance with prior permitting requirements and installation safety rules. From 2001 to April 2007, Oregon sanction rules allowed the pole owner to impose sanctions on pole occupants for certain violations, including failure to secure a contract and a permit prior to installation, as well as failure to install in compliance with permit, contract and OPUC safety rules. In addition, the rules allowed pole owners to charge for any expenses incurred as a result of an unauthorized attachment.[1] With regard to safety and clearance requirements, a pole owner was given the authority to correct any attachment deficiencies and charge the licensee for its costs. [2]

---

[1] OAR 860-028-0110(7) effective 1-1-01.
[2] OAR 860-028-0110(8) effective 1-1-01.

The sanction amounts were as follows: for no contract, $500 or 60 times the owner's annual rental fee per pole; for no permit, $250 per pole or 30 times the annual rental fee per pole; and for violations of other duties including code violations created, $200 per pole or 20 times the annual rental fee per pole.[3] The sanction amounts for no contract and no permit could be reduced 60% if timely corrective action was taken by the licensee. The sanctions for violations of other duties could be reduced 70% if timely corrective action was taken by the licensee.[4] In addition, if the licensee did not respond in a timely manner and failed to comply, the pole owner could double the sanction amount.[5]

PGE found fewer unauthorized attachments as a result of conducting audits, recovering costs from licensees with unauthorized attachments, collecting back rent, and applying sanctions during the 2001-2007 time period.

In 2006, the OPUC, with the assistance of the Oregon Joint Use Association, an industry group with cable, power, ILEC and CLEC representation, conducted an overhaul of the pole attachment rules. The new rules, effective April 16, 2007 revised the sanction

[3] OAR 860-028-0130-0150 effective 1-1-01.
[4] Id.
[5] OAR 860-028-0180.

rules by eliminating the 60-70% discount for timely action by the licensee, reduced the sanction amount for no permit and violation of pole occupant duties, and eliminated the authority of the pole owner to double fines if licensees fail to respond. These current rules provide for a $500 per pole sanction for no contract that may be applied once a year; $100 plus five times the current rent for unauthorized attachments discovered by the pole owner; five times the current rent for an unauthorized attachment reported by a licensee; and a $200 per pole sanction for failing to install in accordance with OPUC safety rules, the contract and permit or failing to permit a service drop within 7 days.[6] With regard to the latter category, the pole owner is not authorized to apply sanctions if the licensee submits a timely plan of correction[7] or corrects the violation in a timely manner.[8] With regard to newly constructed, newly permitted or newly transferred attachments, the pole owner may sanction a licencee after giving the licensee notice of the violation and five days to cure.[9] No sanctions apply if the violation is found as

---

[6] OAR 860-028-0130 – 0150 , Rules effective 4-16-07.
[7] A plan of correction is timely if submitted within 60 days of the pole owner's notification of the violation. OAR 860-028-0150(3)(a).
[8] Timely correction of a violation is correction within 180 days of the pole owner's notification of the violation. Id.
[9] AR 860-028-0150(5), Rules effective 4-16-07.

part of a joint post construction inspection, and a request for a joint inspection may not be unreasonably denied. [10]

PGE joins the Edison Electric Institute and the Utilities Telecom Council in recommending the Oregon sanctions scheme to the FCC. Sanctions resulted in more permitted attachments in our service territory and could have similar impacts in FCC jurisdiction states.

PGE's Management of Code Violations

Now that most attachments are permitted, the attention of the Oregon PUC and PGE is focused on compliant attachments. PGE is required by law to have a comprehensive overhead and underground facilities inspection program.[11] This program, the Facilities Inspection and Treatment to the National Electric Safety Code (FITNES), involves an inspector visiting every pole on which PGE has power attachments over a ten year period. Inspectors collect data when PGE's attachments are noncompliant or when licensee attachments create a noncompliance. PGE then notifies the licensee of the violation, conducts joint field inspections and manages the timeline from notification to correction. If a licensee fails to correct the violation in a timely manner, PGE may sanction the licensee.

---

[10] Id.
[11] OAR 860-024-00-0011(1)(b).

To manage the process of notifying the licensee of violations and licensee responses and timelines, PGE invested in Pole Manager – a company developed and supported electronic notification and response system. Through Pole Manager, PGE notifies licensees; licensees respond and update progress on correcting violations. PGE identifies an average 15,000 attacher noncompliances per year and is currently managing 44,000 violations, working with licensees on NESC interpretation issues and make ready and design work to correct the violations. The administrative rules require pole owners to verify the accuracy of data sent to licensees and respond to licensee requests for assistance in making a correction within 45 days.[12]

In the PGE service territory, as a result of compliance incentives, regulatory support, and industry cooperation, PGE's infrastructure is safe for electrical workers, communications workers and the general public. In addition, electric ratepayers do not unduly subsidize the telecommunications or cable companies in their attachment activity to poles. Costs associated with managing third party pole attachments are borne by the attachers. Under this

[12] OAR 860-028-0115(5) and (6).

system, PGE has made its poles available for third party attachments, while successfully protecting its infrastructure, addressing public and worker safety concerns, and safeguarding the interests of ratepayers through cost recovery.